

Message Text

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SUBJ: PROPOSED NEW CONSTITUTION

REF: COLOMBO 0963

1. SUMMARY: ON JULY 20, A DRAFT CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA WILL BE PLACED BEFORE THE NATIONAL STATE ASSEMBLY (NSA). DEBATE WILL PROBABLY COMMENCE AT THE JULY 27 NSA SESSION. ALTHOUGH THE OPPOSITION TAMIL UNITED LIBERATION FRONT (TULF) AND THE SRI LANKA FREEDOM PARTY (SLFP) HAVE REGISTERED SOME OBJECTIONS TO THE NEW CONSTITUTION, IT WILL BE PASSED BY THE GOVERNMENT'S FOUR-FIFTH MAJORITY IN THE NSA, POSSIBLY WITH MINOR CHANGES.

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END SUMMARY.

2. BACKGROUND
THE UNITED NATIONAL PARTY (UNP) IN ITS ELECTION MANIFESTO SOUGHT A MANDATE TO DRAFT AND ADOPT A NEW REPUBLICAN CONSTITUTION. IN NOVEMBER 1977, THE SPEAKER OF THE NSA APPOINTED A TEN-MAN SELECT COMMITTEE FOR THE REVISION OF THE CONSTITUTION. SEVEN

UNP, TWO SLFP, AND THE LONE CEYLON WORKERS CONGRESS (CWC) MEMBERS PARTICIPATED IN THE SELECT COMMITTEE UNDER THE LEADERSHIP OF THE PRIME MINISTER, J.R. JAYEWARDENE, UNTIL HE BECAME PRESIDENT, AND THE PRIME MINISTER R. PREMADASA. THE TULF DECLINED TO PARTICIPATE. THE COMMITTEE ASKED FOR AND RECEIVED WRITTEN SUBMISSIONS FROM LEADING ORGANIZATIONS THROUGHOUT THE COUNTRY.

3. EXPECTATIONS WERE THAT THE COMMITTEE WOULD DRAFT A THIRD AMENDMENT TO THE PRESENT REPUBLICAN CONSTITUTION PASSED IN 1972. THE GOVERNMENT HAD PUSHED THROUGH AN AMENDMENT TO THAT CONSTITUTION LAST YEAR CREATING A STRONG PRESIDENTIAL SYSTEM OF GOVERNMENT (REFTEL). THE SLFP CLAIMS THAT THE COMMITTEE EXCEEDED THE SCOPE OF ITS AUTHORITY IN DRAFTING A NEW CONSTITUTION AND THAT THE SLFP WOULD NOT HAVE PARTICIPATED IN THE COMMITTEE IF IT HAD KNOWN THE TRUE PURPOSE. IT LODGED ITS DISSENT IN THE COMMITTEE REPORT. PRESIDENT JAYEWARDENE'S PUBLIC RESPONSE WAS TO REFER TO THE UNP ELECTION MANIFESTO. PREDICTABLY, THE LEFTIST PARTIES, PARTICULARLY THE TROTSKYITE LANKA SAMA SAMAJA PARTY (LSSP), WHOSE LEADER WAS THE PRINCIPAL DRAFTER OF THE 1972 CONSTITUTION, ARE CRITICAL OF A NEW CONSTITUTION.

4. MAJOR PROVISIONS OF NEW CONSTITUTION
THE PRESIDENT.

THE STRONG PRESIDENTIAL SYSTEM CREATED BY THE SECOND AMENDMENT LIMITED OFFICIAL USE

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MENT IS INCORPORATED IN THE NEW CONSTITUTION WITH NO IMPORTANT CHANGES AFFECTING THE PRESIDENTIAL STRUCTURE OR POWERS. SLFP OBJECTED STRONGLY TO THE PRESIDENT HAVING A TERM OF OFFICE THAT DOES NOT COINCIDE WITH THAT OF THE NSA, ARGUING THAT SHOULD THE PRESIDENT'S PARTY BE DEFEATED IN A GENERAL ELECTION, IT COULD LEAD TO A CONSTITUTIONAL CRISIS AND CHRONIC INSTABILITY. SLFP SUGGESTED THAT PRESIDENT'S TERM BE SAME AS NSA'S AND THAT LEADER OF PARTY WINNING LARGEST NUMBER OF NSA SEATS SHOULD BE DECLARED PRESIDENT, OBVIATING THE NEED FOR SEPARATE ELECTIONS.

PROPORTIONAL REPRESENTATION

THE DRAFT CONSTITUTION INTRODUCES A PROPORTIONAL REPRESENTATION (PR) SYSTEM THAT WILL ENSURE THAT A PARTY'S STRENGTH IN THE NSA WILL BE IN PROPORTION TO THE TOTAL VOTES RECEIVED IN AN ELECTION. WITH PR SYSTEM, GOVERNMENT SEEKS TO AVOID WHAT IT CALLS UNFAIR SITUATIONS SUCH AS IN 1970 WHEN SLFP WITH 37 PERCENT OF THE VOTE HAD 60 PERCENT OF SEATS AND UNP WITH 38 PERCENT OF VOTE HAD ONLY 11 PERCENT OF SEATS. SIMILARLY, IN 1977 ELECTION UNP WITH 50 PERCENT OF VOTE ENDED UP WITH 83 PERCENT OF SEATS WHILE SLFP WITH 30 PERCENT OF VOTE GAINED ONLY 5 PERCENT OF SEATS. VOTING WILL BE FOR A RECOGNIZED POLITICAL PARTY, OR INDEPENDENT GROUP, NOT FOR AN INDIVIDUAL. PARTIES OR GROUPS MAY SUBMIT NOMINATION PAPER OF CANDIDATES

NAMES IN ORDER OF PRIORITY FOR EACH OF 20 TO 24 ELECTORAL DISTRICTS, WHICH ARE TO BE DEFINED BY A DELIMITATION COMMISSION, TO REPLACE PRESENT 160 WINNER TAKE ALL ELECTORAL CONSTITUENCIES.

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IN THE EVENT OF THE DEATH OR RESIGNATION OF AN MP, THE VACANCY WOULD BE FILLED FROM THE SAME PARTY'S LIST OF CANDIDATES. THERE WOULD BE NO BY-ELECTIONS. A PARTY POLLING LESS THAN ONE-EIGHTH OF THE TOTAL NUMBER OF VOTES IN AN ELECTORATE WOULD NOT BE ENTITLED TO REPRESENTATION IN THE NSA. THE SLFP ATTACKED THE PR SYSTEM ON THE GROUNDS THAT IT WILL RESULT IN A PROLIFERATION OF POLITICAL PARTIES, IT WILL MAKE MP'S NAMES ON LISTS, REMOTE FROM THE VOTER AND WITHOUT RESPONSIBILITY FOR DEVELOPMENT OF THE AREA OR WELFARE OF THE PEOPLE, AND PEOPLE WILL HAVE LITTLE CHOICE IN SELECTION OF CANDIDATES SINCE CHOICE WILL DEPEND ON WHIMS AND FANCIES OF PARTY LEADERS. ELIMINATION OF THE BY-ELECTIONS WILL ALSO ELIMINATE TESTS OF PUBLIC OPINION DURING THE LIFE OF A NSA. CWC'S FEAR IS THAT REQUIREMENTS FOR ONE-EIGHTH OF TOTAL VOTE WILL SWEEP AWAY MINOR POLITICAL PARTIES.

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SOME PROVISIONS OF SOULBURY CONSTITUTION REINSTITUTED PROVISIONS FOR A SEPARATION OF POWERS AS LAID DOWN IN THE SOULBURY CONSTITUTION AND DROPPED FROM THE 1972 CONSTITUTION ARE REINTRODUCED IN THE PROPOSED CONSTITUTION, ALTHOUGH THE SEPARATION IS SOMEWHAT MORE LIMITED. PRINCIPAL SEPARATION IS THAT OF EXECUTIVE FROM LEGISLATIVE POWERS EFFECTED BY SECOND CONSTITUTIONAL AMENDMENT. BY REMOVING EXECUTIVE POWERS FROM NSA, UNP AIM IS TO GIVE STABILITY TO EXECUTIVE FUNCTION SINCE PRESIDENT WILL CONTINUE IN OFFICE FOR FIXED TERM NOT AFFECTED BY DISSOLUTIONS OF PARLIAMENT. NSA ALSO LOSES ITS JUDICIAL POWERS OF BEING ABLE TO CREATE BY LEGISLATION COURTS IN SUBSTITUTION FOR EXISTING SUPERIOR COURTS. THESE PROVISIONS OF DRAFT CONSTITUTION ASSURE THE INDEPENDENCE OF THE JUDICIARY BUT THAT INDEPENDENCE IS ALSO MORE LIMITED THAN UNDER THE SOULBURY CONSTITUTION. THE CONCEPT OF A PUBLIC SERVICE COMMISSION TO DEAL WITH APPOINTMENT, DISMISSAL, TRANSFER, AND DISCIPLINARY CONTROL OF PUBLIC OFFICERS, ANOTHER SOULBURY CONSTITUTION PROVISION DROPPED IN 1972, IS ALSO REINTRODUCED. THERE WERE NO STRONG DISAGREEMENTS OVER ANY OF THESE PROVISIONS.

HUMAN RIGHTS

THE NEW CONSTITUTION GUARANTEES BASIC HUMAN RIGHTS FOR ALL CITIZENS. THERE ARE NO EXPLICIT GUARANTEES FOR ANY MINORITY GROUPS. SINHALA REMAINS THE OFFICIAL LANGUAGE, BUT TAMIL, USED BY APPROXIMATELY 20 PERCENT OF THE POPULATION, HAS BEEN DESIGNATED A NATIONAL LANGUAGE ALONG WITH SINHALA. THIS WOULD MAKE DE JURE WHAT HAS BEEN DE FACTO FOR THE TAMILS - INTER-ALIA, USE OF TAMIL IN EDUCATION, IN ADMINISTRATION IN TRADITIONAL TAMIL AREAS, AND IN EXAMINATIONS FOR PUBLIC SERVICE POSITIONS, ALTHOUGH REASONABLE COMMAND OF SINHALA AS WELL MAY BE REQUIRED FOR CERTAIN POSITIONS.

AMENDMENT OF CONSTITUTION AND REFERENDUM

AMENDMENT OR REPEAL OF THE CONSTITUTION WOULD REQUIRE TWO-THIRDS VOTE OF TOTAL NUMBER OF MP'S OR AT THE PRESIDENT'S

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DISCRETION BY A REFERENDUM BY THE PEOPLE IF THE NSA VOTE IS NOT TWO THIRDS BUT GREATER THAN ONE HALF. ANY CHANGES TO THE CONSTITUTION AFFECTING THE STATE, SOVEREIGNTY, BUDDHISM, OR FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION AND FREEDOM FROM TORTURE MUST BE SUBMITTED TO A REFERENDUM EVEN IF PASSED BY TWO-THIRDS OF THE NSA. A CONTROVERSIAL PROVISION IS THAT GIVING THE PRESIDENT DISCRETIONARY POWER TO SUBMIT TO A REFERENDUM ANY BILL NOT PASSED BY PARLIAMENT THAT DOES NOT INVOLVE A CHANGE TO THE CONSTITUTION.

5. COMMENT

EXCERPTS FROM THE SELECT COMMITTEE'S PROPOSED CONSTITUTION HAVE BEEN APPEARING IN THE PRESS, BUT AS YET THERE HAS BEEN LITTLE PUBLIC REACTION. IN CONVERSATIONS, PARTY MEMBERS AND SUPPORTERS TEND TO SUPPORT THEIR PARTIES' POSITIONS ON THE NEW CONSTITUTION. THE TULF/TAMIL REACTION WILL BE AN IMPORTANT INDICATOR OF WHETHER THE GOVERNMENT WILL BE ABLE TO BRING ABOUT THE NATIONAL UNITY AND HARMONY IT HAS PROMISED. SEVERAL TULF MP'S HAVE EXPRESSED SATISFACTION WITH THE TAMIL LANGUAGE PROVISIONS BUT ARE RESERVING JUDGMENT ON THE BASIC GUARANTEES UNTIL THEY HAD TIME TO STUDY AND DISCUSS THE NEW CONSTITUTION. THE PROPOSED CONSTITUTION WILL PROBABLY BE PASSED ESSENTIALLY AS IS, ALTHOUGH THE GOVERNMENT WILL UNDOUBTEDLY BE AMENDABLE TO MINOR CHANGES TO AVOID UNNECESSARY CONTROVERSY.

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